

From: Rosen, Eric (USAMA)
To: Kendall, Michael; Bell, Karin (USAMA)3; Frank, Stephen (USAMA) 1; Kearney, Kristen (USAMA); O'Connell, Justin (USAMA)
Cc: Malkiel, Yakov; Tomback, Andrew
Subject: RE: Wilson Privileged Marital Communications
Date: Friday, June 26, 2020 3:33:00 PM

Mike,

Thanks for your email. We have a different view of the issue. We understand your email to mean that you are unable to cite case law in support of your position. If we are mistaken, please provide us with those citations so that we may review them.

Thanks.

From: Kendall, Michael <michael.kendall@whitecase.com>
Sent: Thursday, June 25, 2020 7:13 PM
To: Rosen, Eric (USAMA) <erosen2@usa.doj.gov>; Bell, Karin (USAMA)3 <KBell3@usa.doj.gov>; Frank, Stephen (USAMA) 1 <SFrank1@usa.doj.gov>; Kearney, Kristen (USAMA) <KKearney@usa.doj.gov>; O'Connell, Justin (USAMA) <JOConnell@usa.doj.gov>
Cc: Malkiel, Yakov <yakov.malkiel@whitecase.com>; Tomback, Andrew <andrew.tomback@whitecase.com>
Subject: Wilson Privileged Marital Communications

Eric,

Our clients and we are surprised and aghast that the Government has treated the Wilsons' privileged marital communications so cavalierly. We request that the Government:

1. Contact all defendants who were given privileged materials and ask them to return the materials to the Government forthwith and without further review, i.e. a clawback. Please ask them to destroy any work product incorporating such materials.
2. Retrieve copies from anyone else who has received such materials and ask them to also return anything that is the fruit of these privileged materials.
3. Put all returned materials in the custody of the taint team.
4. Provide us with the identity and role of all persons who have received or viewed any of these materials.

We see no logic in your request for additional legal authority requiring the government to take measures (such as a taint team) to ensure that it does not access documents protected by the marital-communications privilege. As far as we are aware, the Government has no right to unilaterally ignore or vitiate any of the privileges that the law recognizes.

Mike

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From: Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>
Sent: Wednesday, June 24, 2020 5:18 PM
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Cc: Tomback, Andrew <andrew.tomback@whitecase.com>; Malkiel, Yakov <yakov.malkiel@whitecase.com>

Subject: RE: College Case Discovery

Mike - We have not found any case requiring the use of a taint team for marital communications save for an unreported magistrate court opinion from the Western District of Virginia. Could you please point us to the legal authority supporting your suggestion that the law requires a taint team in such circumstances?

Eric S. Rosen
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From: Kendall, Michael <michael.kendall@whitecase.com>
Sent: Tuesday, June 23, 2020 6:37 PM
To: Rosen, Eric (USAMA) <erosen2@usa.doj.gov>; Frank, Stephen (USAMA) 1 <SFrank1@usa.doj.gov>; Bell, Karin (USAMA) 3 <KBell3@usa.doj.gov>; O'Connell, Justin (USAMA) <JOConnell@usa.doj.gov>; Kearney, Kristen (USAMA) <KKearney@usa.doj.gov>
Cc: Tomback, Andrew <andrew.tomback@whitecase.com>; Malkiel, Yakov <yakov.malkiel@whitecase.com>
Subject: RE: College Case Discovery

Eric,

Thanks for the quick response. Could you provide us the legal authority for #2 below, that the law does not require use of a taint team for privileged marital communications.

Mike

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From: Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>
Sent: Tuesday, June 23, 2020 6:27 PM
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Cc: Tomback, Andrew <andrew.tomback@whitecase.com>; Malkiel, Yakov <yakov.malkiel@whitecase.com>; Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>
Subject: RE: College Case Discovery

Mike –

In response to your inquiries:

1. Members of the prosecution team reviewed certain of the communications that you contend are privileged. We do not believe we are required to disclose the names of the members of the prosecution team who reviewed them.
2. The law does not require the use of a taint team for marital communications.
3. The government produced the emails to all the defendants in an abundance of caution, because they are charged with conspiracy. Indeed, you previously asked the government to send disclosure letters to all defendants (and not just individual defendants) for this same reason.

Eric

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From: Kendall, Michael <michael.kendall@whitecase.com>
Sent: Monday, June 22, 2020 1:58 PM
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Cc: Tomback, Andrew <andrew.tomback@whitecase.com>; Malkiel, Yakov <yakov.malkiel@whitecase.com>
Subject: College Case Discovery

Eric,

We are writing to you concerning the production of emails that came with the April 28, 2020 discovery letter. As the letter notes, many of these emails were protected by the spousal privilege. Could you please tell us:

1. Did the Government read the privileged communications between John and Leslie Wilson, and the other defendants' spousal communications? If so, was this done by a taint team or members of the prosecution team? Can you provide us with the names of the agents and prosecutors who have been exposed to the spousal communications?
2. If the Government read the privileged communications, is there a reason why the Government thought it did not have to respect the privilege and it could review such materials?
3. Is there a reason why it sent Wilson's privileged materials to the other defendants (and other defendants' materials to the larger defense group)?

John and Leslie Wilson are entitled to the full extent of the protection of the spousal privilege and marital disqualification. They are not waiving or compromising any aspect of such rights.

Thank you,

Mike

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